

Guilty verdict for Naphine government

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Published: October 31, 2013 - 3:00AM

Every weekday around Victorian courts, lawyers and judicial officers are left sitting around waiting for prisoners or detainees to appear. If you get lucky then the defendant might appear an hour or two after the court's traditional starting time of 10am.

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Sometimes defendants do not get brought to court at all. According to Criminal Bar Association president Remy van de Wiel, QC, about 400 people failed to appear in court during the past month due to crowded holding cells. He said, "These people are not even yet convicted of an offence. They can't get to court to apply for bail."

The notion that the government should ensure people in custody are brought to court well before the appointed starting time so they can confer with their lawyers seems not to concern the Naphine government or its jailer - Corrections Victoria. Magistrate Gerard Lethbridge noted this week that it was extraordinary that the executive branch of government ignored court orders.

There is only one reason why Victoria's criminal justice system is becoming a shambles and inhumane. It is because the government panders to an obsession in certain sections of the media with locking up more and more people. A consequence of the pursuit of three years of this type of approach is that prisoners are being shunted from police stations to detention centres to prisons on a daily basis and not being brought to court.

It is a fundamental right of everyone in a civilised society that when a person is in custody the state ensures they are brought to court so their case can be heard. This right is particularly important when the detainee is applying for bail. There is attached a presumption of innocence and, so detaining them one second longer than necessary, is particularly offensive. Furthermore, shunting people from cell to cell is a recipe for mental and physical illness.

It is clear that the government is not going to fix what is now costing the Victorian taxpayers dearly in terms of orders courts are making against Corrections Victoria and in having courts open but without cases being heard because the defendant is not present.

When the executive refuses to ensure that the justice system operates fairly and with regard to the fundamental rights of individuals detained by the state, then it is up to the courts to step in and protect the integrity of a system that is built on the rule of law.

As UK Supreme Court judge Lord Neuberger said recently, "We must always bear in mind that the ability to hold the executive to account is essential to the rule of law: it protects citizens from administrative excess and ensures that the executive adheres to the law."

Traditionally the courts in Australia have been fairly hands-off in the way the state manages its prison system, regarding it as the prerogative of the executive. But in the European Union, Britain and the US, courts have been more robust in ensuring that law and order policies do not impinge on fundamental rights of defendants.

In 2011, the US Supreme Court's Justice Anthony Kennedy led a 5-4 win for the victims of overcrowding in the

California jail system. As Justice Kennedy noted, "to incarcerate, society takes from prisoners the means to provide for their own needs" and the courts cannot sit on their hands and allow the executive to violate fundamental rights of detainees.

Courts in Victoria have the power to challenge the way the executive treats detainees. In 2008, Justice Bernard Bongiorno delivered a courageous ruling in the trial of men charged with terrorism offences in which he held that the trial would be stopped unless the conditions in which these men were treated - including how they came to court each way - were improved.

Given the stubborn refusal of the Napthine government to do a U-turn on its policy of building more prisons and filling them, it is the courts to which Victorians must turn to ensure that the criminal justice system operates fairly and in accordance with the rule of law.

The bottom line for our courts is that they cannot and will not sit by while the executive arm of government snubs its nose at according basic rights to detainees and obeying court orders to have people at court on time.

Barrister Greg Barns is a spokesman for the Australian Lawyers Alliance.

This story was found at: <http://www.theage.com.au/comment/guilty-verdict-for-napthine-government-20131030-2wh8c.html>